

The tax rate that applies to the sale of tangible personal property is generally the rate in effect at the time of delivery of the tangible personal property. See 86 Ill. Adm. Code 130.101. (This is a GIL).

July 3, 2001

Dear Xxxxx:

This letter is in response to your e-mail request dated May 30, 2001. As you are aware, the nature of your request and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found on the Department's Internet website located at http://www.revenue.state.il.us/legalinformation/regs/part_1200.

In your request, you have stated and made inquiry as follows:

We have a client (i.e. lumber yard), located in a County which will be enacting a 1/10th of 1% additional local tax, effective 7/1/2001. Our client collects from its customers on a 'cash-basis.' Therefore, it is very likely that sales will be made and delivered prior to 7/1/2001, however, payment may not be received until after 7/1/2001. Payment can be 'full' or 'partial,' therefore, they may make delivery of the goods in June 2001 and receive 50% with the remaining 50% payment received after 7/1/2001.

Please inform us as to whether the additional 1/10th of 1% should be invoiced and collected by the Lumber Yard taxpayer for June 2001 sales made (whether delivered or not? Does that make a difference), however, for which payment is not received, or partially due, until after July 2001.

DEPARTMENT'S RESPONSE:

For determining the proper amount of tax to charge when a rate change is involved, please see 86 Ill. Adm. Code 130.101. As stated in subsection (a) to Section 130.101, the tax rate is determined by the tax rate in effect on the date of delivery, provided that if delivery occurs after the rate changes and gross receipts were received and tax was paid prior to the tax rate change, no additional tax is due or credit allowed because of the delivery of the property occurring after the rate change.

For example, tangible personal property sold and delivered prior to a tax rate increase is subject to lower tax rate regardless of when payment is made. If delivery is made after a rate change, then determining the appropriate tax rate is somewhat more complicated. If tangible personal property is sold prior to the rate change but delivered after the rate change, the tax rate in effect will depend upon when the retailer received the gross receipts from that sale. For example, a sale of tangible personal property made before a rate increase with a 25% payment being made at

that time but with delivery occurring after the rate increase with the remaining 75% payment being made at the time of delivery will result in the 25% payment being subject to the lower rate of tax and the 75% payment being subject to the higher rate of tax.

Please note that in cases of sales of building materials to construction contractors who are making improvements to real estate, the situation is even more complicated if delivery occurs after a tax rate change. As you can read in subsection (a) of Section 130.101, in the case of sales of building materials to real estate improvement construction contractors for use in performing construction contracts for third persons, if such property is delivered to the contractor after the effective date of a rate increase but will be used in performing a binding construction contract which was entered into before the effective date of the increase and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, the applicable tax rate will be the rate which was in effect before the effective date of the rate increase. Before a supplier may deliver materials to a construction contractor after the effective date of a tax rate increase at the rate which was in effect prior thereto, the purchasing contractor must give such supplier a written, signed certification stating that specifically described materials are being purchased for use in performing a binding contract which was entered into before the effective date of the rate increase (specifying such date) and under which the contractor is legally unable to shift the burden of the tax rate increase to his customer, identifying the construction contract in question by its date and by naming the contractor's construction work involved, and by giving the location on the job site where the construction contract is being performed or is to be performed.

In your scenario set out in your inquiry, the additional 1/10th of 1% tax increase would generally only be charged on payments received after the date of the rate increase if the delivery of the tangible personal property occurred after the date of the rate increase. However, in the case of sales to construction contractors as described above, the tax rate on sales of tangible personal property delivered after the tax rate increase may not be subject to the additional tax rate if the certification described above is provided.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b) described above.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.